

The State of South Carolina



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March 5, 1992

The Honorable David C. Waldrop, Jr.
Member, House of Representatives
425 Blatt Building
Columbia, South Carolina 29211

Dear Representative Waldrop:

By your letter of March 2, 1992, referencing S.C. Code Ann. § 25-11-20 (1989), you have asked whether, in appointing the South Carolina Director of Veterans Affairs, the Governor must presently accept the recommendation of the American Legion in making this appointment. You further asked whether the Governor could appoint someone on his own or whether he would be required to receive another recommendation from the American Legion if he should reject that entity's initial recommendation.

In relevant part, § 25-11-20 provides that the Director of Veterans Affairs "shall be appointed by the Governor upon the recommendation of the executive committee of the American Legion, Department of South Carolina...." This statute was addressed by an opinion of our Office dated May 31, 1974, a copy of which is enclosed. We note that the statute has not been amended since the opinion was rendered.

The issue under consideration therein was, in essence, whether a private organization could "dictate to the Governor of South Carolina without him being able to select a man of his own choice." The legal principle therein involved is delegation of the appointment power. The opinion concluded that the statute "would constitute a valid delegation of authority." 1/

1/ It should be noted that membership in the American Legion is not a prerequisite for recommendation by that body. In cases decided subsequent to our 1974 opinion, the courts have focused on whether the recommending entity is

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To further elaborate on the questions you have raised, reference to a similar situation is helpful. Appointment of a discreet person to be county tax collector was to be made by the Governor upon recommendation of a majority of the county legislative delegation. In Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936), the Court stated:

It is clear that the use of the word "discreet," as applied to the person to be recommended by a majority of the delegation, is only for their guidance, and affords no occasion for the exercise of any judgment or discretion on the part of the Governor. Nor can such appointment be legally made without such recommendation. [Cite omitted.]

The law imposes the positive duty upon the Governor to make the appointment at a time and in a manner or upon conditions which are specifically designated. It is a simple definite duty arising under conditions admitted or proved to exist, and it leaves nothing to his discretion. It is ministerial.

180 S.C. at 47-48.

Based on the foregoing, it appears that the recommendation of the executive committee of the American Legion, Department of South Carolina, is necessary prior to the Governor's appointing the Director of Veterans Affairs, as the statute presently exists.

1/ Continued from Page 1

restricted to considering its own members; if membership is not required, the court is less likely to find an unlawful delegation. See, particularly, Hartzell v. State Board of Examiners in Psychology, 274 S.C. 502, 265 S.E.2d 265 (1980) ("This Court has consistently approved the recommendation by private bodies with legitimate relationships to particular public offices of persons to fill those offices," 274 S.C. at 506). See also Op. Atty. Gen. dated February 27, 1992.

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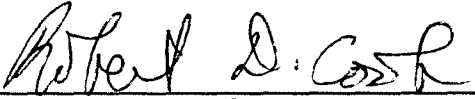
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions